

Introduced by Senator Cogdill

February 20, 2008

An act to amend Sections 186.22, 186.33, 1170.1, 12021.5, 12022.2, 12022.3, and 12022.4 of, and to amend and repeal Sections 1170 and 1170.3 of, the Penal Code, relating to sentencing, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1342, as introduced, Cogdill. Sentencing.

Existing law establishes various felonies punishable by a triad of terms of incarceration in the state prison comprised of low, middle, and upper terms. Existing law provides that the choice of the appropriate term rests within the sound discretion of the court. Under existing law, the provisions that the choice of the appropriate term rests within the sound discretion of the court will be repealed on January 1, 2009.

This bill would extend indefinitely the operation of those provisions authorizing the choice of the appropriate term to rest within the sound discretion of the court.

Existing law establishes various sentencing enhancements consisting of a triad of terms of incarceration in the state prison comprised of low, middle, and upper terms in connection with certain felonies committed in connection with gang activity or where firearms are involved, as specified. Existing law requires the court to impose the middle term, unless there are circumstances in mitigation or aggravation of the crime. Under existing law, some of these provisions were amended by initiative statute, Proposition 21, adopted by the voters March 7, 2001, and may only be amended by the Legislature with a $\frac{2}{3}$ vote of each house.

This bill would instead provide that the choice of the appropriate term would rest within the sound discretion of the court. The bill would make other conforming changes.

By amending an initiative statute, this bill would require a $\frac{2}{3}$ vote of each house of the Legislature.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 186.22 of the Penal Code is amended to
2 read:

3 186.22. (a) Any person who actively participates in any
4 criminal street gang with knowledge that its members engage in
5 or have engaged in a pattern of criminal gang activity, and who
6 willfully promotes, furthers, or assists in any felonious criminal
7 conduct by members of that gang, shall be punished by
8 imprisonment in a county jail for a period not to exceed one year,
9 or by imprisonment in the state prison for 16 months, or two or
10 three years.

11 (b) (1) Except as provided in paragraphs (4) and (5), any person
12 who is convicted of a felony committed for the benefit of, at the
13 direction of, or in association with any criminal street gang, with
14 the specific intent to promote, further, or assist in any criminal
15 conduct by gang members, shall, upon conviction of that felony,
16 in addition and consecutive to the punishment prescribed for the
17 felony or attempted felony of which he or she has been convicted,
18 be punished as follows:

19 (A) Except as provided in subparagraphs (B) and (C), the person
20 shall be punished by an additional term of two, three, or four years
21 at the court's discretion.

22 (B) If the felony is a serious felony, as defined in subdivision
23 (c) of Section 1192.7, the person shall be punished by an additional
24 term of five years.

25 (C) If the felony is a violent felony, as defined in subdivision
26 (c) of Section 667.5, the person shall be punished by an additional
27 term of 10 years.

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility, that fact shall be a circumstance in aggravation of the crime in imposing a term under paragraph (1).

~~(3) The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation.~~ The court shall state the reasons for its choice of sentencing enhancements on the record at the time of the sentencing.

(4) Any person who is convicted of a felony enumerated in this paragraph committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced to an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:

(A) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 3046, if the felony is any of the offenses enumerated in subparagraph (B) or (C) of this paragraph.

(B) Imprisonment in the state prison for 15 years, if the felony is a home invasion robbery, in violation of subparagraph (A) of paragraph (1) of subdivision (a) of Section 213; carjacking, as defined in Section 215; a felony violation of Section 246; or a violation of Section 12022.55.

(C) Imprisonment in the state prison for seven years, if the felony is extortion, as defined in Section 519; or threats to victims and witnesses, as defined in Section 136.1.

(5) Except as provided in paragraph (4), any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement

1 enumerated in subdivision (b), the court shall require that the
2 defendant serve a minimum of 180 days in a county jail as a
3 condition thereof.

4 (d) Any person who is convicted of a public offense punishable
5 as a felony or a misdemeanor, which is committed for the benefit
6 of, at the direction of or in association with, any criminal street
7 gang with the specific intent to promote, further, or assist in any
8 criminal conduct by gang members, shall be punished by
9 imprisonment in the county jail not to exceed one year, or by
10 imprisonment in the state prison for one, two, or three years,
11 provided that any person sentenced to imprisonment in the county
12 jail shall be imprisoned for a period not to exceed one year, but
13 not less than 180 days, and shall not be eligible for release upon
14 completion of sentence, parole, or any other basis, until he or she
15 has served 180 days. If the court grants probation or suspends the
16 execution of sentence imposed upon the defendant, it shall require
17 as a condition thereof that the defendant serve 180 days in a county
18 jail.

19 (e) As used in this chapter, “pattern of criminal gang activity”
20 means the commission of, attempted commission of, conspiracy
21 to commit, or solicitation of, sustained juvenile petition for, or
22 conviction of two or more of the following offenses, provided at
23 least one of these offenses occurred after the effective date of this
24 chapter and the last of those offenses occurred within three years
25 after a prior offense, and the offenses were committed on separate
26 occasions, or by two or more persons:

27 (1) Assault with a deadly weapon or by means of force likely
28 to produce great bodily injury, as defined in Section 245.

29 (2) Robbery, as defined in Chapter 4 (commencing with Section
30 211) of Title 8 of Part 1.

31 (3) Unlawful homicide or manslaughter, as defined in Chapter
32 1 (commencing with Section 187) of Title 8 of Part 1.

33 (4) The sale, possession for sale, transportation, manufacture,
34 offer for sale, or offer to manufacture controlled substances as
35 defined in Sections 11054, 11055, 11056, 11057, and 11058 of
36 the Health and Safety Code.

37 (5) Shooting at an inhabited dwelling or occupied motor vehicle,
38 as defined in Section 246.

1 (6) Discharging or permitting the discharge of a firearm from
2 a motor vehicle, as defined in subdivisions (a) and (b) of Section
3 12034.

4 (7) Arson, as defined in Chapter 1 (commencing with Section
5 450) of Title 13.

6 (8) The intimidation of witnesses and victims, as defined in
7 Section 136.1.

8 (9) Grand theft, as defined in subdivision (a) or (c) of Section
9 487.

10 (10) Grand theft of any firearm, vehicle, trailer, or vessel.

11 (11) Burglary, as defined in Section 459.

12 (12) Rape, as defined in Section 261.

13 (13) Looting, as defined in Section 463.

14 (14) Money laundering, as defined in Section 186.10.

15 (15) Kidnapping, as defined in Section 207.

16 (16) Mayhem, as defined in Section 203.

17 (17) Aggravated mayhem, as defined in Section 205.

18 (18) Torture, as defined in Section 206.

19 (19) Felony extortion, as defined in Sections 518 and 520.

20 (20) Felony vandalism, as defined in paragraph (1) of
21 subdivision (b) of Section 594.

22 (21) Carjacking, as defined in Section 215.

23 (22) The sale, delivery, or transfer of a firearm, as defined in
24 Section 12072.

25 (23) Possession of a pistol, revolver, or other firearm capable
26 of being concealed upon the person in violation of paragraph (1)
27 of subdivision (a) of Section 12101.

28 (24) Threats to commit crimes resulting in death or great bodily
29 injury, as defined in Section 422.

30 (25) Theft and unlawful taking or driving of a vehicle, as defined
31 in Section 10851 of the Vehicle Code.

32 (26) Felony theft of an access card or account information, as
33 defined in Section 484e.

34 (27) Counterfeiting, designing, using, attempting to use an
35 access card, as defined in Section 484f.

36 (28) Felony fraudulent use of an access card or account
37 information, as defined in Section 484g.

38 (29) Unlawful use of personal identifying information to obtain
39 credit, goods, services, or medical information, as defined in
40 Section 530.5.

1 (30) Wrongfully obtaining Department of Motor Vehicles
2 documentation, as defined in Section 529.7.

3 (31) Prohibited possession of a firearm in violation of Section
4 12021.

5 (32) Carrying a concealed firearm in violation of Section 12025.

6 (33) Carrying a loaded firearm in violation of Section 12031.

7 (f) As used in this chapter, “criminal street gang” means any
8 ongoing organization, association, or group of three or more
9 persons, whether formal or informal, having as one of its primary
10 activities the commission of one or more of the criminal acts
11 enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),
12 inclusive, of subdivision (e), having a common name or common
13 identifying sign or symbol, and whose members individually or
14 collectively engage in or have engaged in a pattern of criminal
15 gang activity.

16 (g) Notwithstanding any other law, the court may strike the
17 additional punishment for the enhancements provided in this
18 section or refuse to impose the minimum jail sentence for
19 misdemeanors in an unusual case where the interests of justice
20 would best be served, if the court specifies on the record and enters
21 into the minutes the circumstances indicating that the interests of
22 justice would best be served by that disposition.

23 (h) Notwithstanding any other provision of law, for each person
24 committed to the Division of Juvenile Facilities for a conviction
25 pursuant to subdivision (a) or (b) of this section, the offense shall
26 be deemed one for which the state shall pay the rate of 100 percent
27 of the per capita institutional cost of the Division of Juvenile
28 Facilities, pursuant to Section 912.5 of the Welfare and Institutions
29 Code.

30 (i) In order to secure a conviction or sustain a juvenile petition,
31 pursuant to subdivision (a) it is not necessary for the prosecution
32 to prove that the person devotes all, or a substantial part, of his or
33 her time or efforts to the criminal street gang, nor is it necessary
34 to prove that the person is a member of the criminal street gang.
35 Active participation in the criminal street gang is all that is
36 required.

37 (j) A pattern of gang activity may be shown by the commission
38 of one or more of the offenses enumerated in paragraphs (26) to
39 (30), inclusive, of subdivision (e), and the commission of one or
40 more of the offenses enumerated in paragraphs (1) to (25),

1 inclusive, or (31) to (33), inclusive of subdivision (e). A pattern
2 of gang activity cannot be established solely by proof of
3 commission of offenses enumerated in paragraphs (26) to (30),
4 inclusive, of subdivision (e), alone.

5 SEC. 2. Section 186.33 of the Penal Code is amended to read:

6 186.33. (a) Any person required to register pursuant to Section
7 186.30 who knowingly violates any of its provisions is guilty of
8 a misdemeanor.

9 (b) (1) Any person who knowingly fails to register pursuant to
10 Section 186.30 and is subsequently convicted of, or any person
11 for whom a petition is subsequently sustained for a violation of,
12 any of the offenses specified in Section 186.30, shall be punished
13 by an additional term of imprisonment in the state prison for 16
14 months, or 2, or 3 years. ~~The court shall order imposition of the~~
15 ~~middle term unless there are circumstances in aggravation or~~
16 ~~mitigation.~~ The court shall state its reasons for the enhancement
17 choice on the record at the time of sentencing.

18 (2) The existence of any fact bringing a person under this
19 subdivision shall be alleged in the information, indictment, or
20 petition, and be either admitted by the defendant or minor in open
21 court, or found to be true or not true by the trier of fact.

22 SEC. 3. Section 1170 of the Penal Code, as amended by Section
23 1 of Chapter 740 of the Statutes of 2007, is amended to read:

24 1170. (a) (1) The Legislature finds and declares that the
25 purpose of imprisonment for crime is punishment. This purpose
26 is best served by terms proportionate to the seriousness of the
27 offense with provision for uniformity in the sentences of offenders
28 committing the same offense under similar circumstances. The
29 Legislature further finds and declares that the elimination of
30 disparity and the provision of uniformity of sentences can best be
31 achieved by determinate sentences fixed by statute in proportion
32 to the seriousness of the offense as determined by the Legislature
33 to be imposed by the court with specified discretion.

34 (2) Notwithstanding paragraph (1), the Legislature further finds
35 and declares that programs should be available for inmates,
36 including, but not limited to, educational programs, that are
37 designed to prepare nonviolent felony offenders for successful
38 reentry into the community. The Legislature encourages the
39 development of policies and programs designed to educate and
40 rehabilitate nonviolent felony offenders. In implementing this

1 section, the Department of Corrections and Rehabilitation is
2 encouraged to give priority enrollment in programs to promote
3 successful return to the community to an inmate with a short
4 remaining term of commitment and a release date that would allow
5 him or her adequate time to complete the program.

6 (3) In any case in which the punishment prescribed by statute
7 for a person convicted of a public offense is a term of imprisonment
8 in the state prison of any specification of three time periods, the
9 court shall sentence the defendant to one of the terms of
10 imprisonment specified unless the convicted person is given any
11 other disposition provided by law, including a fine, jail, probation,
12 or the suspension of imposition or execution of sentence or is
13 sentenced pursuant to subdivision (b) of Section 1168 because he
14 or she had committed his or her crime prior to July 1, 1977. In
15 sentencing the convicted person, the court shall apply the
16 sentencing rules of the Judicial Council. The court, unless it
17 determines that there are circumstances in mitigation of the
18 punishment prescribed, shall also impose any other term that it is
19 required by law to impose as an additional term. Nothing in this
20 article shall affect any provision of law that imposes the death
21 penalty, that authorizes or restricts the granting of probation or
22 suspending the execution or imposition of sentence, or expressly
23 provides for imprisonment in the state prison for life. In any case
24 in which the amount of preimprisonment credit under Section
25 2900.5 or any other provision of law is equal to or exceeds any
26 sentence imposed pursuant to this chapter, the entire sentence shall
27 be deemed to have been served and the defendant shall not be
28 actually delivered to the custody of the secretary. The court shall
29 advise the defendant that he or she shall serve a period of parole
30 and order the defendant to report to the parole office closest to the
31 defendant's last legal residence, unless the in-custody credits equal
32 the total sentence, including both confinement time and the period
33 of parole. The sentence shall be deemed a separate prior prison
34 term under Section 667.5, and a copy of the judgment and other
35 necessary documentation shall be forwarded to the secretary.

36 (b) When a judgment of imprisonment is to be imposed and the
37 statute specifies three possible terms, the choice of the appropriate
38 term shall rest within the sound discretion of the court. At least
39 four days prior to the time set for imposition of judgment, either
40 party or the victim, or the family of the victim if the victim is

1 deceased, may submit a statement in aggravation or mitigation. In
2 determining the appropriate term, the court may consider the record
3 in the case, the probation officer's report, other reports including
4 reports received pursuant to Section 1203.03 and statements in
5 aggravation or mitigation submitted by the prosecution, the
6 defendant, or the victim, or the family of the victim if the victim
7 is deceased, and any further evidence introduced at the sentencing
8 hearing. The court shall select the term which, in the court's
9 discretion, best serves the interests of justice. The court shall set
10 forth on the record the reasons for imposing the term selected and
11 the court may not impose an upper term by using the fact of any
12 enhancement upon which sentence is imposed under any provision
13 of law. A term of imprisonment shall not be specified if imposition
14 of sentence is suspended.

15 (c) The court shall state the reasons for its sentence choice on
16 the record at the time of sentencing. The court shall also inform
17 the defendant that as part of the sentence after expiration of the
18 term he or she may be on parole for a period as provided in Section
19 3000.

20 (d) When a defendant subject to this section or subdivision (b)
21 of Section 1168 has been sentenced to be imprisoned in the state
22 prison and has been committed to the custody of the secretary, the
23 court may, within 120 days of the date of commitment on its own
24 motion, or at any time upon the recommendation of the secretary
25 or the Board of Parole Hearings, recall the sentence and
26 commitment previously ordered and resentence the defendant in
27 the same manner as if he or she had not previously been sentenced,
28 provided the new sentence, if any, is no greater than the initial
29 sentence. The resentence under this subdivision shall apply the
30 sentencing rules of the Judicial Council so as to eliminate disparity
31 of sentences and to promote uniformity of sentencing. Credit shall
32 be given for time served.

33 (e) (1) Notwithstanding any other law and consistent with
34 paragraph (1) of subdivision (a), if the secretary or the Board of
35 Parole Hearings or both determine that a prisoner satisfies the
36 criteria set forth in paragraph (2), the secretary or the board may
37 recommend to the court that the prisoner's sentence be recalled.

38 (2) The court shall have the discretion to resentence or recall if
39 the court finds that the facts described in subparagraph (A) and
40 (B) or subparagraphs (B) and (C) exist:

1 (A) The prisoner is terminally ill with an incurable condition
2 caused by an illness or disease that would produce death within
3 six months, as determined by a physician employed by the
4 department.

5 (B) The conditions under which the prisoner would be released
6 or receive treatment do not pose a threat to public safety.

7 (C) The prisoner is permanently medically incapacitated with
8 a medical condition that renders him or her permanently unable
9 to perform activities of basic daily living, and results in the prisoner
10 requiring 24-hour total care, including, but not limited to, coma,
11 persistent vegetative state, brain death, ventilator-dependency, loss
12 of control of muscular or neurological function, and that
13 incapacitation did not exist at the time of the original sentencing.

14 The Board of Parole Hearings shall make findings pursuant to
15 this subdivision before making a recommendation for resentence
16 or recall to the court. This subdivision does not apply to a prisoner
17 sentenced to death or a term of life without the possibility of parole.

18 (3) Within 10 days of receipt of a positive recommendation by
19 the secretary or the board, the court shall hold a hearing to consider
20 whether the prisoner's sentence should be recalled.

21 (4) Any physician employed by the department who determines
22 that a prisoner has six months or less to live shall notify the chief
23 medical officer of the prognosis. If the chief medical officer
24 concurs with the prognosis, he or she shall notify the warden.
25 Within 48 hours of receiving notification, the warden or the
26 warden's representative shall notify the prisoner of the recall and
27 resentencing procedures, and shall arrange for the prisoner to
28 designate a family member or other outside agent to be notified
29 as to the prisoner's medical condition and prognosis, and as to the
30 recall and resentencing procedures. If the inmate is deemed
31 mentally unfit, the warden or the warden's representative shall
32 contact the inmate's emergency contact and provide the information
33 described in paragraph (2).

34 (5) The warden or the warden's representative shall provide the
35 prisoner and his or her family member, agent, or emergency
36 contact, as described in paragraph (4), updated information
37 throughout the recall and resentencing process with regard to the
38 prisoner's medical condition and the status of the prisoner's recall
39 and resentencing proceedings.

1 (6) Notwithstanding any other provisions of this section, the
2 prisoner or his or her family member or designee may
3 independently request consideration for recall and resentencing
4 by contacting the chief medical officer at the prison or the
5 secretary. Upon receipt of the request, the chief medical officer
6 and the warden or the warden's representative shall follow the
7 procedures described in paragraph (4). If the secretary determines
8 that the prisoner satisfies the criteria set forth in paragraph (2), the
9 secretary or board may recommend to the court that the prisoner's
10 sentence be recalled. The secretary shall submit a recommendation
11 for release within 30 days in the case of inmates sentenced to
12 determinate terms and, in the case of inmates sentenced to
13 indeterminate terms, the secretary shall make a recommendation
14 to the Board of Parole Hearings with respect to the inmates who
15 have applied under this section. The board shall consider this
16 information and make an independent judgment pursuant to
17 paragraph (2) and make findings related thereto before rejecting
18 the request or making a recommendation to the court. This action
19 shall be taken at the next lawfully noticed board meeting.

20 (7) Any recommendation for recall submitted to the court by
21 the secretary or the Board of Parole Hearings shall include one or
22 more medical evaluations, a postrelease plan, and findings pursuant
23 to paragraph (2).

24 (8) If possible, the matter shall be heard before the same judge
25 of the court who sentenced the prisoner.

26 (9) If the court grants the recall and resentencing application,
27 the prisoner shall be released by the department within 48 hours
28 of receipt of the court's order, unless a longer time period is agreed
29 to by the inmate. At the time of release, the warden or the warden's
30 representative shall ensure that the prisoner has each of the
31 following in his or her possession: a discharge medical summary,
32 full medical records, state identification, parole medications, and
33 all property belonging to the prisoner. After discharge, any
34 additional records shall be sent to the prisoner's forwarding
35 address.

36 (10) The secretary shall issue a directive to medical and
37 correctional staff employed by the department that details the
38 guidelines and procedures for initiating a recall and resentencing
39 procedure. The directive shall clearly state that any prisoner who
40 is given a prognosis of six months or less to live is eligible for

1 recall and resentencing consideration, and that recall and
2 resentencing procedures shall be initiated upon that prognosis.

3 (f) Any sentence imposed under this article shall be subject to
4 the provisions of Sections 3000 and 3057 and any other applicable
5 provisions of law.

6 (g) A sentence to state prison for a determinate term for which
7 only one term is specified, is a sentence to state prison under this
8 section.

9 ~~(h) This section shall remain in effect only until January 1, 2009,~~
10 ~~and as of that date is repealed, unless a later enacted statute, that~~
11 ~~is enacted before that date, deletes or extends that date.~~

12 SEC. 4. Section 1170 of the Penal Code, as amended by Section
13 2 of Chapter 740 of the Statutes of 2007, is repealed.

14 ~~1170. (a) (1) The Legislature finds and declares that the~~
15 ~~purpose of imprisonment for crime is punishment. This purpose~~
16 ~~is best served by terms proportionate to the seriousness of the~~
17 ~~offense with provision for uniformity in the sentences of offenders~~
18 ~~committing the same offense under similar circumstances. The~~
19 ~~Legislature further finds and declares that the elimination of~~
20 ~~disparity and the provision of uniformity of sentences can best be~~
21 ~~achieved by determinate sentences fixed by statute in proportion~~
22 ~~to the seriousness of the offense as determined by the Legislature~~
23 ~~to be imposed by the court with specified discretion.~~

24 ~~(2) Notwithstanding paragraph (1), the Legislature further finds~~
25 ~~and declares that programs should be available for inmates,~~
26 ~~including, but not limited to, educational programs, that are~~
27 ~~designed to prepare nonviolent felony offenders for successful~~
28 ~~reentry into the community. The Legislature encourages the~~
29 ~~development of policies and programs designed to educate and~~
30 ~~rehabilitate nonviolent felony offenders. In implementing this~~
31 ~~section, the Department of Corrections and Rehabilitation is~~
32 ~~encouraged to give priority enrollment in programs to promote~~
33 ~~successful return to the community to an inmate with a short~~
34 ~~remaining term of commitment and a release date that would allow~~
35 ~~him or her adequate time to complete the program.~~

36 ~~(3) In any case in which the punishment prescribed by statute~~
37 ~~for a person convicted of a public offense is a term of imprisonment~~
38 ~~in the state prison of any specification of three time periods, the~~
39 ~~court shall sentence the defendant to one of the terms of~~
40 ~~imprisonment specified unless the convicted person is given any~~

1 other disposition provided by law, including a fine, jail, probation,
2 or the suspension of imposition or execution of sentence or is
3 sentenced pursuant to subdivision (b) of Section 1168 because he
4 or she had committed his or her crime prior to July 1, 1977. In
5 sentencing the convicted person, the court shall apply the
6 sentencing rules of the Judicial Council. The court, unless it
7 determines that there are circumstances in mitigation of the
8 punishment prescribed, shall also impose any other term that it is
9 required by law to impose as an additional term. Nothing in this
10 article shall affect any provision of law that imposes the death
11 penalty, that authorizes or restricts the granting of probation or
12 suspending the execution or imposition of sentence, or expressly
13 provides for imprisonment in the state prison for life. In any case
14 in which the amount of preimprisonment credit under Section
15 2900.5 or any other provision of law is equal to or exceeds any
16 sentence imposed pursuant to this chapter, the entire sentence shall
17 be deemed to have been served and the defendant shall not be
18 actually delivered to the custody of the secretary. The court shall
19 advise the defendant that he or she shall serve a period of parole
20 and order the defendant to report to the parole office closest to the
21 defendant's last legal residence, unless the in-custody credits equal
22 the total sentence, including both confinement time and the period
23 of parole. The sentence shall be deemed a separate prior prison
24 term under Section 667.5, and a copy of the judgment and other
25 necessary documentation shall be forwarded to the secretary.

26 (b) When a judgment of imprisonment is to be imposed and the
27 statute specifies three possible terms, the court shall order
28 imposition of the middle term, unless there are circumstances in
29 aggravation or mitigation of the crime. At least four days prior to
30 the time set for imposition of judgment, either party or the victim,
31 or the family of the victim if the victim is deceased, may submit
32 a statement in aggravation or mitigation to dispute facts in the
33 record or the probation officer's report, or to present additional
34 facts. In determining whether there are circumstances that justify
35 imposition of the upper or lower term, the court may consider the
36 record in the case, the probation officer's report, other reports
37 including reports received pursuant to Section 1203.03 and
38 statements in aggravation or mitigation submitted by the
39 prosecution, the defendant, or the victim, or the family of the victim
40 if the victim is deceased, and any further evidence introduced at

1 the sentencing hearing. The court shall set forth on the record the
2 facts and reasons for imposing the upper or lower term. The court
3 may not impose an upper term by using the fact of any
4 enhancement upon which sentence is imposed under any provision
5 of law. A term of imprisonment shall not be specified if imposition
6 of sentence is suspended.

7 (e) The court shall state the reasons for its sentence choice on
8 the record at the time of sentencing. The court shall also inform
9 the defendant that as part of the sentence after expiration of the
10 term he or she may be on parole for a period as provided in Section
11 3000.

12 (d) When a defendant subject to this section or subdivision (b)
13 of Section 1168 has been sentenced to be imprisoned in the state
14 prison and has been committed to the custody of the secretary, the
15 court may, within 120 days of the date of commitment on its own
16 motion, or at any time upon the recommendation of the secretary
17 or the Board of Parole Hearings, recall the sentence and
18 commitment previously ordered and resentence the defendant in
19 the same manner as if he or she had not previously been sentenced,
20 provided the new sentence, if any, is no greater than the initial
21 sentence. The resentence under this subdivision shall apply the
22 sentencing rules of the Judicial Council so as to eliminate disparity
23 of sentences and to promote uniformity of sentencing. Credit shall
24 be given for time served.

25 (e) (1) Notwithstanding any other law and consistent with
26 paragraph (1) of subdivision (a), if the secretary or the Board of
27 Parole Hearings or both determine that a prisoner satisfies the
28 criteria set forth in paragraph (2), the secretary or the board may
29 recommend to the court that the prisoner's sentence be recalled.

30 (2) The court shall have the discretion to resentence or recall if
31 the court finds that the facts described in subparagraphs (A) and
32 (B) or subparagraphs (B) and (C) exist:

33 (A) The prisoner is terminally ill with an incurable condition
34 caused by an illness or disease that would produce death within
35 six months, as determined by a physician employed by the
36 department.

37 (B) The conditions under which the prisoner would be released
38 or receive treatment do not pose a threat to public safety.

39 (C) The prisoner is permanently medically incapacitated with
40 a medical condition that renders him or her permanently unable

1 to perform activities of basic daily living, and results in the prisoner
2 requiring 24-hour total care, including, but not limited to, coma,
3 persistent vegetative state, brain death, ventilator-dependency, loss
4 of control of muscular or neurological function, and that
5 incapacitation did not exist at the time of the original sentencing.

6 The Board of Parole Hearings shall make findings pursuant to
7 this subdivision before making a recommendation for resentence
8 or recall to the court. This subdivision does not apply to a prisoner
9 sentenced to death or a term of life without the possibility of parole.

10 (3) Within 10 days of receipt of a positive recommendation by
11 the secretary or the board, the court shall hold a hearing to consider
12 whether the prisoner's sentence should be recalled.

13 (4) Any physician employed by the department who determines
14 that a prisoner has six months or less to live shall notify the chief
15 medical officer of the prognosis. If the chief medical officer
16 concurs with the prognosis, he or she shall notify the warden.
17 Within 48 hours of receiving notification, the warden or the
18 warden's representative shall notify the prisoner of the recall and
19 resentencing procedures, and shall arrange for the prisoner to
20 designate a family member or other outside agent to be notified
21 as to the prisoner's medical condition and prognosis, and as to the
22 recall and resentencing procedures. If the inmate is deemed
23 mentally unfit, the warden or the warden's representative shall
24 contact the inmate's emergency contact and provide the information
25 described in paragraph (2).

26 (5) The warden or the warden's representative shall provide the
27 prisoner and his or her family member, agent, or emergency
28 contact, as described in paragraph (4), updated information
29 throughout the recall and resentencing process with regard to the
30 prisoner's medical condition and the status of the prisoner's recall
31 and resentencing proceedings.

32 (6) Notwithstanding any other provisions of this section, the
33 prisoner or his or her family member or designee may
34 independently request consideration for recall and resentencing
35 by contacting the chief medical officer at the prison or the
36 secretary. Upon receipt of the request, the chief medical officer
37 and the warden or the warden's representative shall follow the
38 procedures described in paragraph (4). If the secretary determines
39 that the prisoner satisfies the criteria set forth in paragraph (2), the
40 secretary or board may recommend to the court that the prisoner's

1 sentence be recalled. The secretary shall submit a recommendation
2 for release within 30 days in the case of inmates sentenced to
3 determinate terms and, in the case of inmates sentenced to
4 indeterminate terms, the secretary shall make a recommendation
5 to the Board of Parole Hearings with respect to the inmates who
6 have applied under this section. The board shall consider this
7 information and make an independent judgment pursuant to
8 paragraph (2) and make findings related thereto before rejecting
9 the request or making a recommendation to the court. This action
10 shall be taken at the next lawfully noticed board meeting.

11 (7) Any recommendation for recall submitted to the court by
12 the secretary or the Board of Parole Hearings shall include one or
13 more medical evaluations, a postrelease plan, and findings pursuant
14 to paragraph (2):

15 (8) If possible, the matter shall be heard before the same judge
16 of the court who sentenced the prisoner.

17 (9) If the court grants the recall and resentencing application,
18 the prisoner shall be released by the department within 48 hours
19 of receipt of the court's order, unless a longer time period is agreed
20 to by the inmate. At the time of release, the warden or the warden's
21 representative shall ensure that the prisoner has each of the
22 following in his or her possession: a discharge medical summary,
23 full medical records, state identification, parole medications, and
24 all property belonging to the prisoner. After discharge, any
25 additional records shall be sent to the prisoner's forwarding
26 address.

27 (10) The secretary shall issue a directive to medical and
28 correctional staff employed by the department that details the
29 guidelines and procedures for initiating a recall and resentencing
30 procedure. The directive shall clearly state that any prisoner who
31 is given a prognosis of six months or less to live is eligible for
32 recall and resentencing consideration, and that recall and
33 resentencing procedures shall be initiated upon that prognosis.

34 (f) Any sentence imposed under this article shall be subject to
35 the provisions of Sections 3000 and 3057 and any other applicable
36 provisions of law.

37 (g) A sentence to state prison for a determinate term for which
38 only one term is specified, is a sentence to state prison under this
39 section.

40 (h) This section shall become operative on January 1, 2009.

1 SEC. 5. Section 1170.1 of the Penal Code is amended to read:

2 1170.1. (a) Except as otherwise provided by law, and subject
3 to Section 654, when any person is convicted of two or more
4 felonies, whether in the same proceeding or court or in different
5 proceedings or courts, and whether by judgment rendered by the
6 same or by a different court, and a consecutive term of
7 imprisonment is imposed under Sections 669 and 1170, the
8 aggregate term of imprisonment for all these convictions shall be
9 the sum of the principal term, the subordinate term, and any
10 additional term imposed for applicable enhancements for prior
11 convictions, prior prison terms, and Section 12022.1. The principal
12 term shall consist of the greatest term of imprisonment imposed
13 by the court for any of the crimes, including any term imposed for
14 applicable specific enhancements. The subordinate term for each
15 consecutive offense shall consist of one-third of the middle term
16 of imprisonment prescribed for each other felony conviction for
17 which a consecutive term of imprisonment is imposed, and shall
18 include one-third of the term imposed for any specific
19 enhancements applicable to those subordinate offenses.

20 (b) If a person is convicted of two or more violations of
21 kidnapping, as defined in Section 207, involving separate victims,
22 the subordinate term for each consecutive offense of kidnapping
23 shall consist of the full middle term and shall include the full term
24 imposed for specific enhancements applicable to those subordinate
25 offenses.

26 (c) In the case of any person convicted of one or more felonies
27 committed while the person is confined in a state prison or is
28 subject to reimprisonment for escape from custody and the law
29 either requires the terms to be served consecutively or the court
30 imposes consecutive terms, the term of imprisonment for all the
31 convictions that the person is required to serve consecutively shall
32 commence from the time the person would otherwise have been
33 released from prison. If the new offenses are consecutive with each
34 other, the principal and subordinate terms shall be calculated as
35 provided in subdivision (a). This subdivision shall be applicable
36 in cases of convictions of more than one offense in the same or
37 different proceedings.

38 (d) When the court imposes a prison sentence for a felony
39 pursuant to Section 1170 or subdivision (b) of Section 1168, the
40 court shall also impose, in addition and consecutive to the offense

1 of which the person has been convicted, the additional terms
2 provided for any applicable enhancements. If an enhancement is
3 punishable by one of three terms, the court shall, *in its discretion*,
4 ~~impose the middle term unless there are circumstances in~~
5 ~~aggravation or mitigation~~ *one of those terms*, and state the reasons
6 for its sentence choice, ~~other than the middle term~~, on the record
7 at the time of sentencing. The court shall also impose any other
8 additional term that the court determines in its discretion or as
9 required by law shall run consecutive to the term imposed under
10 Section 1170 or subdivision (b) of Section 1168. In considering
11 the imposition of the additional term, the court shall apply the
12 sentencing rules of the Judicial Council.

13 (e) All enhancements shall be alleged in the accusatory pleading
14 and either admitted by the defendant in open court or found to be
15 true by the trier of fact.

16 (f) When two or more enhancements may be imposed for being
17 armed with or using a dangerous or deadly weapon or a firearm
18 in the commission of a single offense, only the greatest of those
19 enhancements shall be imposed for that offense. This subdivision
20 shall not limit the imposition of any other enhancements applicable
21 to that offense, including an enhancement for the infliction of great
22 bodily injury.

23 (g) When two or more enhancements may be imposed for the
24 infliction of great bodily injury on the same victim in the
25 commission of a single offense, only the greatest of those
26 enhancements shall be imposed for that offense. This subdivision
27 shall not limit the imposition of any other enhancements applicable
28 to that offense, including an enhancement for being armed with
29 or using a dangerous or deadly weapon or a firearm.

30 (h) For any violation of an offense specified in Section 667.6,
31 the number of enhancements that may be imposed shall not be
32 limited, regardless of whether the enhancements are pursuant to
33 this section, Section 667.6, or some other provision of law. Each
34 of the enhancements shall be a full and separately served term.

35 SEC. 6. Section 1170.3 of the Penal Code, as amended by
36 Section 4 of Chapter 3 of the Statutes of 2007, is amended to read:

37 1170.3. The Judicial Council shall seek to promote uniformity
38 in sentencing under Section 1170, by:

1 (a) The adoption of rules providing criteria for the consideration
2 of the trial judge at the time of sentencing regarding the court's
3 decision to:

- 4 (1) Grant or deny probation.
- 5 (2) Impose the lower, middle, or upper prison term.
- 6 (3) Impose concurrent or consecutive sentences.
- 7 (4) Determine whether or not to impose an enhancement where
8 that determination is permitted by law.

9 (b) The adoption of rules standardizing the minimum content
10 and the sequential presentation of material in probation officer
11 reports submitted to the court.

12 ~~(c) This section shall remain in effect only until January 1, 2009,~~
13 ~~and as of that date is repealed, unless a later enacted statute, that~~
14 ~~is enacted before January 1, 2009, deletes or extends that date.~~

15 SEC. 7. Section 1170.3 of the Penal Code, as added by Section
16 5 of Chapter 3 of the Statutes of 2007, is repealed.

17 ~~1170.3. The Judicial Council shall seek to promote uniformity~~
18 ~~in sentencing under Section 1170, by:~~

19 ~~(a) The adoption of rules providing criteria for the consideration~~
20 ~~of the trial judge at the time of sentencing regarding the court's~~
21 ~~decision to:~~

- 22 ~~(1) Grant or deny probation.~~
- 23 ~~(2) Impose the lower or upper prison term.~~
- 24 ~~(3) Impose concurrent or consecutive sentences.~~
- 25 ~~(4) Determine whether or not to impose an enhancement where~~
26 ~~that determination is permitted by law.~~

27 ~~(b) The adoption of rules standardizing the minimum content~~
28 ~~and the sequential presentation of material in probation officer~~
29 ~~reports submitted to the court.~~

30 ~~(c) This section shall become operative on January 1, 2009.~~

31 SEC. 8. Section 12021.5 of the Penal Code is amended to read:

32 12021.5. (a) Every person who carries a loaded or unloaded
33 firearm on his or her person, or in a vehicle, during the commission
34 or attempted commission of any street gang crimes described in
35 subdivision (a) or (b) of Section 186.22, shall, upon conviction of
36 the felony or attempted felony, be punished by an additional term
37 of imprisonment in the state prison for one, two, or three years in
38 the court's discretion. ~~The court shall impose the middle term~~
39 ~~unless there are circumstances in aggravation or mitigation. The~~

1 court shall state the reasons for its enhancement choice on the
2 record at the time of sentence.

3 (b) Every person who carries a loaded or unloaded firearm
4 together with a detachable shotgun magazine, a detachable pistol
5 magazine, a detachable magazine, or a belt-feeding device on his
6 or her person, or in a vehicle, during the commission or attempted
7 commission of any street gang crimes described in subdivision (a)
8 or (b) of Section 186.22, shall, upon conviction of the felony or
9 attempted felony, be punished by an additional term of
10 imprisonment in the state prison for two, three, or four years in
11 the court's discretion. ~~The court shall impose the middle term~~
12 ~~unless there are circumstances in aggravation or mitigation.~~ The
13 court shall state the reasons for its enhancement choice on the
14 record at the time of sentence.

15 (c) As used in this section, the following definitions shall apply:

16 (1) "Detachable magazine" means a device that is designed or
17 redesigned to do all of the following:

18 (A) To be attached to a rifle that is designed or redesigned to
19 fire ammunition.

20 (B) To be attached to, and detached from, a rifle that is designed
21 or redesigned to fire ammunition.

22 (C) To feed ammunition continuously and directly into the
23 loading mechanism of a rifle that is designed or redesigned to fire
24 ammunition.

25 (2) "Detachable pistol magazine" means a device that is
26 designed or redesigned to do all of the following:

27 (A) To be attached to a semiautomatic firearm that is not a rifle
28 or shotgun that is designed or redesigned to fire ammunition.

29 (B) To be attached to, and detached from, a firearm that is not
30 a rifle or shotgun that is designed or redesigned to fire ammunition.

31 (C) To feed ammunition continuously and directly into the
32 loading mechanism of a firearm that is not a rifle or a shotgun that
33 is designed or redesigned to fire ammunition.

34 (3) "Detachable shotgun magazine" means a device that is
35 designed or redesigned to do all of the following:

36 (A) To be attached to a firearm that is designed or redesigned
37 to fire a fixed shotgun shell through a smooth or rifled bore.

38 (B) To be attached to, and detached from, a firearm that is
39 designed or redesigned to fire a fixed shotgun shell through a
40 smooth bore.

1 (C) To feed fixed shotgun shells continuously and directly into
2 the loading mechanism of a firearm that is designed or redesigned
3 to fire a fixed shotgun shell.

4 (4) “Belt-feeding device” means a device that is designed or
5 redesigned to continuously feed ammunition into the loading
6 mechanism of a machinegun or a semiautomatic firearm.

7 (5) “Rifle” shall have the same meaning as specified in
8 paragraph (20) of subdivision (c) of Section 12020.

9 (6) “Shotgun” shall have the same meaning as specified in
10 paragraph (21) of subdivision (c) of Section 12020.

11 SEC. 9. Section 12022.2 of the Penal Code is amended to read:

12 12022.2. (a) Any person who, while armed with a firearm in
13 the commission or attempted commission of any felony, has in his
14 or her immediate possession ammunition for the firearm designed
15 primarily to penetrate metal or armor, shall upon conviction of
16 that felony or attempted felony, in addition and consecutive to the
17 punishment prescribed for the felony or attempted felony, be
18 punished by an additional term of 3, 4, or 10 years. ~~The court shall~~
19 ~~order the middle term unless there are circumstances in aggravation~~
20 ~~or mitigation. The court shall state the reasons for its enhancement~~
21 ~~choice on the record at the time of the sentence.~~

22 (b) Any person who wears a body vest in the commission or
23 attempted commission of a violent offense, as defined in
24 subdivision (b) of Section 12021.1, shall, upon conviction of that
25 felony or attempted felony, in addition and consecutive to the
26 punishment prescribed for the felony or attempted felony of which
27 he or she has been convicted, be punished by an additional term
28 of one, two, or five years. ~~The court shall order the middle term~~
29 ~~unless there are circumstances in aggravation or mitigation. The~~
30 ~~court shall state the reasons for its enhancement choice on the~~
31 ~~record at the time of the sentence.~~

32 (c) As used in this section, “body vest” means any
33 bullet-resistant material intended to provide ballistic and trauma
34 protection for the wearer.

35 SEC. 10. Section 12022.3 of the Penal Code is amended to
36 read:

37 12022.3. For each violation or attempted violation of Section
38 261, 262, 264.1, 286, 288, 288a, or 289, and in addition to the
39 sentence provided, any person shall receive the following:

1 (a) A 3-, 4-, or 10-year enhancement if the person uses a firearm
2 or a deadly weapon in the commission of the violation.

3 (b) A one-, two-, or five-year enhancement if the person is armed
4 with a firearm or a deadly weapon. ~~The court shall order the middle~~
5 ~~term unless there are circumstances in aggravation or mitigation.~~
6 The court shall state the reasons for its enhancement choice on the
7 record at the time of the sentence.

8 SEC. 11. Section 12022.4 of the Penal Code is amended to
9 read:

10 12022.4. Any person who, during the commission or attempted
11 commission of a felony, furnishes or offers to furnish a firearm to
12 another for the purpose of aiding, abetting, or enabling that person
13 or any other person to commit a felony shall, in addition and
14 consecutive to the punishment prescribed by the felony or
15 attempted felony of which the person has been convicted, be
16 punished by an additional term of one, two, or three years in the
17 state prison. ~~The court shall order the middle term unless there are~~
18 ~~circumstances in aggravation or mitigation.~~ The court shall state
19 the reasons for its enhancement choice on the record at the time
20 of the sentence. The additional term provided in this section shall
21 not be imposed unless the fact of the furnishing is charged in the
22 accusatory pleading and admitted or found to be true by the trier
23 of fact.

24 SEC. 12. This act is an urgency statute necessary for the
25 immediate preservation of the public peace, health, or safety within
26 the meaning of Article IV of the Constitution and shall go into
27 immediate effect. The facts constituting the necessity are:

28 In order to maintain stability and uniformity in sentencing in
29 California's criminal justice system, it is necessary that this act
30 take effect immediately.